

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 11, 2013

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2013AP1238-FT

Cir. Ct. No. 2012SC56

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

CALUMET COUNTY,

PLAINTIFF-APPELLANT,

V.

TOWN OF HARRISON,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Calumet County:
DALE L. ENGLISH, Judge. *Affirmed.*

¶1 GUNDRUM, J.¹ Calumet County (the County) appeals the trial court's grant of summary judgment to the Town of Harrison (the Town). The

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a) (2011-12). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

County contends the court erred in its conclusion that because the County owns the land upon which the sidewalk at issue in this case is located, the Town, in which the sidewalk also is located, is not responsible for removal of snow and ice upon the sidewalk. We affirm.

BACKGROUND

¶2 The relevant undisputed facts are as follows. The sidewalk at issue is located within the County and upon land owned by the County and is adjacent to a county trunk highway. The sidewalk was installed when the highway was reconstructed. The sidewalk also is located within the Town. At some point, the County removed snow from the sidewalk and, despite requests by the County, the Town has refused to pay for the snow removal.² The County filed suit against the Town in an attempt to recover the cost of removing the snow. The trial court granted the Town’s request for summary judgment and the County appeals.

DISCUSSION

¶3 We are all familiar with summary judgment methodology, so it will not be repeated here. There are no material facts in dispute and, as the County points out, “[t]he issue on appeal before this Court revolves around statutory

² The County alleges that the Town *requested* that the County remove snow from the sidewalk on the particular occasion at issue. The trial court found that “[t]he record ... doesn’t reflect any agreement between the County and the Town whereby the Town agreed to accept responsibility for the removal of the snow or ice with respect to the sidewalk in question.” The County has not developed any argument on appeal suggesting a contractual issue related to the snow removal is of consequence to this appeal. For that reason and because the County has provided no citation to evidence in the record supporting its statement that the Town requested the county to perform the snow removal services at issue, we do not consider the matter. *Siva Truck Leasing, Inc. v. Kurman Distribs.*, 166 Wis. 2d 58, 70 n.32, 479 N.W.2d 542 (Ct. App. 1991) (a reviewing court is not required to search the record for facts supporting a party’s contention).

interpretation,” which is a question of law we review de novo. *Butzlaff v. DHFS*, 223 Wis. 2d 673, 679, 590 N.W.2d 9 (Ct. App. 1998).

¶4 The County asks us to reverse the trial court and conclude that the Town is responsible for snow and ice removal on the sidewalk pursuant to WIS. STAT. § 66.0907. As the County effectively conceded in briefing before the trial court, if § 66.0907 does not apply to the Town in this case, the County cannot prevail. Section 66.0907 reads in relevant part:

(5) SNOW AND ICE. The board of public works shall keep *the sidewalks of the city* clear of snow and ice in all cases where the owners or occupants of abutting lots fail to do so, and the expense of clearing in front of any lot or parcel of land shall be included in the statement to the comptroller required by sub. (3) (f), in the comptroller’s statement to the city clerk and in the special tax to be levied. The city may also impose a fine or penalty for neglecting to keep sidewalks clear of snow and ice.

(Emphasis added.) By operation of § 66.0907(10), subsection (5) also applies to towns.³ The County reads this statute as meaning the Town is responsible for removing snow and ice from “*any sidewalk within [its] boundaries.*” (Emphasis added.) We disagree with this reading.

³ WISCONSIN STAT. § 66.0907(10) provides in relevant part that the provisions of § 66.0907

apply to towns and villages, and when applied to towns and villages:

(a) “Board of public works” means the committee or officer designated to handle street or sidewalk matters.

(b) “City” means town or village.

(c) “Comptroller” means clerk.

¶5 Considering the County’s expansive reading of subsection (5), we note that the County has cited no case law supporting its apparent position that the Town is generally authorized, indeed required, to go upon property owned by another to remove snow or ice on a sidewalk owned by that person or entity simply because the sidewalk is located *within* the Town. Nor does the County squarely counter the Town’s plain language argument that the only relevant meaning of the term “of,” as used in the phrase “the sidewalks of the [town]” in subsection (5), is “a function word to indicate belonging or a possessive relationship.” See MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY (10th ed. 1997); see *State v. Mattes*, 175 Wis. 2d 572, 578, 499 N.W.2d 711 (Ct. App. 1993) (“A common and approved meaning for a word ... may be ascertained by reference to a recognized dictionary.”). We agree with the Town that the plain reading of the legislature’s use of the word “of” in that phrase indicates that a sidewalk must belong to or be possessed by a town for it to be a sidewalk “of the town.” Had the legislature intended towns to be responsible for snow and ice removal for “any sidewalk *within* [their] boundaries,” as the County contends, we would expect the legislature to have used the obvious word “within” (i.e., “the sidewalks within the [town]”).

¶6 Here, it is undisputed that the sidewalk is located upon county-owned land and adjacent to a county trunk highway. The County has identified no facts in the record from which a reasonable jury could conclude that this sidewalk belongs to or is possessed by the Town.⁴ See *Clay v. Horton Mfg. Co., Inc.*, 172 Wis. 2d 349, 354, 493 N.W.2d 379 (Ct. App. 1992) (for a nonmoving party to

⁴ In its arguments to the trial court in its motion for reconsideration in this case, the County acknowledges, “I don’t think the Town owns the sidewalk.”

avoid summary judgment “the evidence must be such that a reasonable jury could return a verdict for the nonmoving party.”). Absent such a showing, WIS. STAT. § 66.0907(5) is inapplicable to this sidewalk, and thus the Town has no responsibility under that provision for the removal of snow and ice on it.

By the Court.—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)4.

